THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.22243 OF 1997
and
WRIT PETITION NO.12944 OF 1998

DATED: 13-04-2007

W.P.No.22243 OF 1997:

Between:

Executive Engineer, Vamsadhara Project, Maintenance Division, Narasannapeta, Srikakulam District.

.. Petitioner

and

D. Bhujanga Rao and another.

.. Respondents

W.P.No.12944 of 1998:

Between:

D. Bhujanga Rao

.. Petitioner

and

The Executive Engineer, Vamsadhara Project, Maintenance Division, Narasannapeta, Srikakulam District and another.

.. Respondents

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.22243 OF 1997
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COMMON ORDER:

W.P.No.22243 OF 1997

This writ petition is filed seeking a certiorari to call for the records pertaining to an award, dated 30.09.1996, passed in I.D.No.48 of 1992, on the file of the Industrial Tribunal-cum-Labour Court, and quash the same as illegal.

The petitioner is the management and the 1st respondent is the workman. The 1st respondent-workman, originally, raised a dispute before the Conciliation Officer and then the Deputy Commissioner of Labour, Visakhapatnam referred the same to the Industrial Tribunal-cum-Labour Court for its adjudication on the following issue:-

> "Whether the termination of services of Sri D.Bhujangarao by the Executive Engineer, Vamsadhara Project is justified? If not to what relief the said workman is entitled?"

It was the case of the workman that he joined in the service of the management and worked from 01.03.1976 to 31.12.1983 continuously, as watchman, on a monthly salary of Rs.310/-. He was removed from service without giving one month's notice and without paying retrenchment compensation, while retaining his juniors. Fresh workers

were appointed without giving him an opportunity for re-employment. Thus, he remained unemployed since the removal and could not secure employment elsewhere in spite of his best efforts.

The petitioner-management filed counter denying the material allegations made in the claim petition. It was asserted that the workman never worked with the management from 01.03.1976 to 31.12.1983 continuously on a monthly salary of Rs.310/-, but he was engaged on NMR basis on daily wages from 01.03.1976 to 21.02.1979 occasionally as and when there was work and he never worked up to 31.12.1983 as alleged by him. A statement showing the number of days worked by the petitioner was filed before the Tribunal along with the counter and prayed for dismissal of the I.D.

The workman, in support of his case, himself has been examined as WW-1 and also examined one Pakeer as WW-2. On behalf of the management, MW-1 was examined. Ex.W-1, letter, dated 10.11.1988, addressed by the management to the workman, was marked on behalf of the workman and no documents were marked on behalf of the management.

After detailed consideration of both oral and documentary evidence on record, the Tribunal held that the workman worked for more than one year, during the period from 1976 to 1980, continuously with the management and that the workman was retrenched illegally in contravention of Section 25-F of the Industrial Disputes Act (for short 'the Act') without sufficient reason. Accordingly, an award was passed holding that the workman is entitled for reinstatement, but without continuity of service and backwages, since he did not approach the Tribunal within a reasonable time.

Aggrieved by the same, the present writ petition is filed by the

management and the workman filed the other writ petition, W.P.No.12944 of 1998 which is being disposed of together with this writ petition, seeking continuity of service and backwages.

It is the contention of the learned counsel for the petitioner that the Labour Court has not properly appreciated the facts and circumstances of the case and erroneously held that the workman worked for more than one year and also erred in holding that the petitioner has violated the mandatory provisions of Section 25-F of the Act in terminating the services of the workman.

The learned counsel for the 1st respondent-workman Sri Sudhakar Reddy, however, supported the award passed by the Labour Court insofar as the reinstatement of the workman is concerned and further stated that the workman is entitled for continuity of service and backwages as prayed for in W.P.No.12944 of 1998.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned award and other material available on record.

The Labour Court, on the basis of evidence placed before it, came to the conclusion that the workman worked at least for more than one year from 1976 to 1980 since the management admitted that the workman worked with breaks during the said period i.e. from 1976 to 1980. It was further held that the management has violated the provisions of Section 25 of the Act.

It is not the case of the petitioner that any notice under Section 25-F of the Act was given or any compensation in lieu of notice or the retrenchment compensation, as contemplated under Section 25 of the Act, was paid.

Under those circumstances, in my considered view, the conclusions reached by the Labour Court that the workman has worked for more than one year continuously from 1976 to 1980 and the provisions of Section 25 of the Act were violated, cannot be said to be erroneous. Further, the Labour Court has rightly held that the workman is not entitled for continuity of service and backwages, since he has failed to take legal steps within reasonable time, and the said finding also requires no interference by this Court. Thus, I am of the opinion that the award passed by the Labour Court does not suffer from any legal infirmities calling for interference of this Court under Article 226 of the Constitution of India. This writ petition is devoid of merits and is liable to be dismissed.

The writ petition is accordingly dismissed. No costs.

W.P.No.12944 OF 1998

For the reasons recorded above, I see no reason to interfere with the award passed by the Industrial Tribunal-cum- Labour Court. Therefore, this writ petition is also liable to be dismissed and is accordingly dismissed. No costs.

C.V. RAMULU, J

13th April, 2007.
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